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09/965,140	09/26/2001	Jerome L. Elkind	TI-33085	6252

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EXAMINER
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SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/965,140  
Filing Date: September 26, 2001  
Appellant(s): ELKIND, JEROME L.

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Jay M. Cantor  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/01/05 appealing from the Office action  
mailed 07/08/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,310,526	Yalvac et al .	5-1994
6,085,576	Sunshine et al.	7-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **14-18,20-24,26-28,32,36** are rejected under 35 U.S.C. 102(b) as being anticipated by Yalvac et al. (USPN 5,310,526).

Yalvac discloses a chemical sensor (10) that comprises a cavity defined by two openings where two porous plugs seal (col. 1, lines 54-67) the openings to create the cavity (fig.1 ref. 13). A pressurized sample is flowed through one porous plug into the cavity while a pressurized reagent is flowed through the other porous plug into the

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cavity. A component of interest in the sample reacts with a reactive component of the reagent in the cavity to produce a reaction product. The reaction product is then analyzed in the cavity by, for example, absorption spectroscopy (optical based, col. 3, line 55- col. 4, line 37)). An ultra sonic vibrator (fig. 1 ref. 24; col. 3, lines 31-42) is attached to the body to enhance mixing of the reagent and sample in the cavity.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim **37-41** is rejected under 35 U.S.C. 103(a) as being unpatentable over Yalvac et al. (USPN 5,310,526) in view of Sunshine (USPN 6,085,576).

Yalvac discloses a chemical sensor as can be seen above.

Yalvac does not teach a data processing device, a data input device, an algorithmic software directing the data processing device, a wireless communications link, or a transmitter.

Sunshine teaches a handheld sensing apparatus that comprises a processor having a data input device, a keypad for entering data, an algorithmic software that directs the data processing device, communication links and a transmitter (col. 13, lines

32-col. 15, line 29) in order to facilitate on site display of detection results, as well as transmission to another interested user. It would have been obvious to one having an ordinary skill in the art to modify Yalvac to incorporate a data processor for analyzing data collected in order to be able to analyze more samples and store data on a backup system. It would have been obvious to modify Yalvac to incorporate a data transferring device like that of Sunshine to transmit data through wireless communication to data stations to keep real time monitoring of in line systems.

#### **(10) Response to Arguments**

1) Appellant argues, "The invention relates to a portable analyzer and the structure as claimed is designed specifically for such a device. The principle reference cited is clearly not a portable device. This deficiency of the principal reference applies to all of the claims and both rejection." Yalvac states the sensor 10 is attached to the wall of a chemical reactor 11 by bolts 19. It is inherent that without the bolts that are used to affix the sensor to the wall of the reactor the sensor is in a free state and would be portable. Further, to state that something is portable is relative, for example if the sensor is big it might need to be loaded by a truck, but it is still portable because it can be moved. Webster's Ninth New Collegiate Dictionary defines portable as "capable of being carried or moved about." Yalvac sensor is clearly portable by the definition and as seen in figure 1 by the bolts used to attach the sensor to the wall of the reactor.

Appellant argues, "Claim 14 requires that the fluid compartment be in fluid communication with the sensor surface. No such feature is taught or suggested by

Yalvac et al.” Yalvac discloses a chemical sensor that comprises a cavity where a sample and reagents are combined to produce a reaction mixture, then the contents are detected by absorbance spectroscopy. Light shines through the cavity to a lens (40) which in turn goes to the detector (39). Claim 1 only requires a biosensor having a sensor surface, said biosensor detecting properties of a given sample analyte at said sensor surface. A surface as defined by Webster's Ninth New Collegiate Dictionary is, “the exterior or upper boundary of an object or body... of, located on, or designed for use at the surface of something.” Since Yalvac is a chemical sensor, the inner surface of the cavity 13 is a surface, therefore a sensor surface is created. Further there is nothing in the instant claims that would distinguish the sensor surface of Yalvac from the instant sensor surface. With respect to the argument, “There is no provision or need to steer the analyte to the sensor surface for the purpose of detection of the sample at the sensor surface”, the sample analyte of Yalvac takes up the entire space in the cavity. Therefore the analyte is in fluid communication with the sensor surface of Yalvac as defined above where detection of an analytes property can be detected.

2) Appellant argues, “Sunshine relates to vapor sensor and is from an entirely different field of endeavor. Accordingly, even were Sunshine to show additional features claimed in these claims, there is still not (sic) teaching or suggestion to combine the references other than from the subject disclosure.” Sunshine specifically states on col. 2, lines 31-33, that the device can be used to measure or identify one or more analytes in a medium such as vapor, liquid or gas, solids or others. Since Sunshine states the device can be used for analyte detection in a liquid, Sunshine is in

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the same field of endeavor as Yalvac. Further both structures are capable of detecting analytes in liquids. Sunshine teaches a handheld sensing apparatus that comprises a processor having a data input device, a keypad for entering data, an algorithmic software that directs the data processing device, communication links and a transmitter (col. 13, lines 32-col. 15, line 29) in order to facilitate on site display of detection results, as well as transmission to another interested user. It would have been obvious to one having an ordinary skill in the art to modify Yalvac to incorporate a data processor for analyzing data collected in order to be able to analyze more samples and store data on a backup system. It would have been obvious to modify Yalvac to incorporate a data transferring device like that of Sunshine to transmit data through wireless communication to data stations to keep real time monitoring of in line systems.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Sam Siefke



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